



City of Santa Barbara California

CITY OF SANTA BARBARA STAFF HEARING OFFICER

RESOLUTION NO. 077-16

321 OCEANO AVENUE

MODIFICATION AND COASTAL DEVELOPMENT PERMIT

NOVEMBER 9, 2016

APPLICATION OF KEITH RIVERA, ARCHITECT FOR BRAD & CYNTHIA FROHLING LIVING TRUST, 321 OCEANO AVENUE, 045-071-003, R-2 TWO FAMILY RESIDENCE ZONE, GENERAL PLAN AND LOCAL COASTAL PLAN LAND USE PLAN DESIGNATION: RESIDENTIAL, 12 DWELLING UNITS PER ACRE (MST2015-00347).

The proposed project involves construction of a new two-story residential duplex consisting of a 1,765 square foot unit with a 444 square foot attached 2-car garage, and a 2,037 square foot unit with a 443 square foot attached 2-car garage. Related site grading, utilities, paving, drainage and landscaping are also proposed. The 7,564 square foot project site is currently developed with a 1,186 square foot one-story single-family dwelling, including a 228 square foot attached 2-car garage, which will be demolished.

The discretionary applications required for this project are:

1. A Lot Area Modification to allow greater residential density than currently allowed in the R-2 zone due to R-2 lot slope density requirements (SBMC §28.18.075 and SBMC §28.92.110.A.2); and
2. A Coastal Development Permit (CDP2015-00012) to allow the proposed development in the Non-Appealable Jurisdiction of the City's Coastal Zone (SBMC §28.44.060).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15183, Projects Consistent With A Community Plan Or Zoning, and Section 15305, Minor Alterations In Land Use Limitations.

WHEREAS, the Staff Hearing Officer has held the required public hearing on the above application, and the Applicant was present.

WHEREAS, no one appeared to speak in favor of the application or in opposition thereto, and the following exhibits were presented for the record:

1. Staff Report with Attachments, November 2, 2016.
2. Site Plans
3. Correspondence received in opposition to or with concerns on the project:
Joseph M. Gonzalez, Ph.D., Santa Barbara, CA.

NOW, THEREFORE BE IT RESOLVED that the City Staff Hearing Officer:

I. Approved the subject application making the following findings and determinations:

A. ENVIRONMENTAL REVIEW

The project qualifies for an exemption from further environmental review under CEQA Guidelines Section 15183, based on City Staff analysis and the CEQA certificate of determination on file for this project and Section 15305, Minor Alterations In Land Use Limitations..

B. LOT AREA MODIFICATION (SBMC §28.92.110)

The requested Lot Area Modification is consistent with the purposes and intent of the Zoning Ordinance. With approval of the requested Lot Area Modification, the project is consistent with the intent of the R-2 Zone development standards, and allows for two units that are allowed by the City's General Plan and Coastal Land Use Plan designation of 12 Dwelling Units Per Acre. The proposed duplex building is an appropriate improvement on the lot because it is compatible with the mixed residential development in the area.

C. COASTAL DEVELOPMENT PERMIT (SBMC §28.44.150)

The project is consistent with the Coastal Act and Local Coastal Plan in that it maintains public access to the coast; is served by adequate public services; will not have adverse effects on coastal resources; will not impact views to and along the ocean; will be visually compatible with the character of the surrounding area; and will provide adequate parking. The development will minimize risks to life and property in areas of high geologic, flood and fire hazard because the site is not located in an area of geologic, flood or fire sensitivity. The project is consistent with the Coastal Land Use Plan designation of Residential, 12 Dwelling Units Per Acre for the property.

II. Said approval is subject to the following conditions:

In consideration of the project approval granted by the Staff Hearing Officer and for the benefit of the owner(s) and occupant(s) of the Real Property, the owners and occupants of adjacent real property and the public generally, the following terms and conditions are imposed on the use, possession, and enjoyment of the Real Property:

A. Order of Development. In order to accomplish the proposed development, the following steps shall occur in the order identified:

1. Obtain all required design review approvals.
2. Pay Land Development Team Recovery Fee (30% of all planning fees, as calculated by staff) at time of building permit application.
3. Submit an application for and obtain a Building Permit (BLD) to demolish any structures / improvements and/or perform rough grading. Comply with condition E "Construction Implementation Requirements."

4. Record any required documents (see Recorded Conditions Agreement section).
5. Permits.
 - a. Submit an application for and obtain a Building Permit (BLD) for construction of approved development and complete said development.
 - b. Submit an application for and obtain a Public Works Permit (PBW) for all required public improvements and complete said improvements.

Details on implementation of these steps are provided throughout the conditions of approval.

B. **Recorded Conditions Agreement.** The Owner shall execute a *written instrument*, which shall be prepared by Planning staff, reviewed as to form and content by the City Attorney, Community Development Director and Public Works Director, recorded in the Office of the County Recorder, and shall include the following:

1. **Approved Development.** The development of the Real Property approved by the Staff Hearing Officer on November 9, 2016 is limited to two dwelling units and the improvements shown on the plans signed by the Staff Hearing Officer on said date and on file at the City of Santa Barbara.
2. **Uninterrupted Water Flow.** The Owner shall allow for the continuation of any historic flow of water onto the Real Property including, but not limited to, swales, natural watercourses, conduits and any access road, as appropriate.
3. **Landscape Plan Compliance.** The Owner shall comply with the Landscape Plan approved by the Architectural Board of Review (ABR). Such plan shall not be modified unless prior written approval is obtained from the ABR. The landscaping on the Real Property shall be provided and maintained in accordance with said landscape plan, including any tree protection measures. If said landscaping is removed for any reason without approval by the ABR, the owner is responsible for its immediate replacement.
4. **Storm Water Pollution Control and Drainage Systems Maintenance.** Owner shall maintain the drainage system and storm water pollution control devices in a functioning state and in accordance with the Storm Water BMP Guidance Manual and Operations and Maintenance Procedure Plan approved by the Creeks Division. Should any of the project's surface or subsurface drainage structures or storm water pollution control methods fail to capture, infiltrate, and/or treat water, or result in increased erosion, the Owner shall be responsible for any necessary repairs to the system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the Owner shall submit a repair and restoration plan to the Community Development Director to determine if an amendment or a new Building Permit and Coastal Development Permit is required to authorize such work. The Owner is responsible for the adequacy of any project-related drainage facilities and for the continued maintenance thereof in a manner that will preclude

any hazard to life, health, or damage to the Real Property or any adjoining property.

5. **Geotechnical Liability Limitation.** The Owner understands and is advised that the site may be subject to extraordinary hazards from landslides, erosion, retreat, settlement, or subsidence and assumes liability for such hazards. The Owner unconditionally waives any present, future, and unforeseen claims of liability on the part of the City arising from the aforementioned or other natural hazards and relating to this permit approval, as a condition of this approval. Further, the Owner agrees to indemnify and hold harmless the City and its employees for any alleged or proven acts or omissions and related cost of defense, related to the City's approval of this permit and arising from the aforementioned or other natural hazards whether such claims should be stated by the Owner's successor-in-interest or third parties.
 6. **Areas Available for Parking.** All parking areas and access thereto shall be kept open and available in the manner in which it was designed and permitted.
 7. **Residential Permit Parking Program.** Residents shall not participate in the Residential Permit Parking Program.
- C. **Design Review.** The project, including public improvements, is subject to the review and approval of the Architectural Board of Review (ABR). The ABR shall not grant project design approval until the following Staff Hearing Officer land use conditions have been satisfied.
1. **Screened Backflow Device.** All backflow devices for fire sprinklers, pools, spas and/or irrigation systems shall be provided in a location screened from public view or included in the exterior wall of the building, as approved by the ABR.
 2. **Trash Enclosure Provision.** A trash enclosure with adequate area for recycling containers (an area that allows for a minimum of 50 percent of the total capacity for recycling containers) shall be provided on the Real Property and screened from view from surrounding properties and the street. Dumpsters and containers with a capacity of 1.5 cubic yards or more shall not be placed within five (5) feet of combustible walls, openings, or roofs, unless protected with fire sprinklers.
 3. **Driveway Curb Provision.** A curb with a minimum height of 6 inches shall be provided along both sides of the driveway to prevent parking/driving in landscaped areas.
- D. **Requirements Prior to Permit Issuance.** The Owner shall submit the following, or evidence of completion of the following, for review and approval by the Department listed below prior to the issuance of any permit for the project. Some of these conditions may be waived for demolition or rough grading permits, at the discretion of the department listed. Please note that these conditions are in addition to the standard submittal requirements for each department.
1. Public Works Department.

- a. **Approved Public Improvement Plans.** Public Improvement Plans as identified in condition D.1.c “Oceano Avenue Public Improvements” shall be submitted to the Public Works Department for review and approval. The Public Improvement Plans shall be submitted and approved with the Building Plan. They may be submitted separate from Building Plans to allow Public Works Department clearance of the Building Permit(s) if the Owner has bonded for public improvements and executed the *Agreement to Construct and Install Improvements (Not a Subdivision)*.
- b. **Water Rights Assignment Agreement.** The Owner shall assign to the City of Santa Barbara the exclusive right to extract ground water from under the Real Property in an *Agreement Assigning Water Extraction Rights*. Engineering Division Staff prepares said agreement for the Owner’s signature.
- c. **Oceano Avenue Public Improvements.** The Owner shall submit C-1 public improvement or Public Works plans for construction of improvements along the property frontage on Oceano Avenue for review and approval by the City Engineer and shall be prepared by a licensed civil engineer registered in the State of California. As determined by the Public Works Department, the improvements shall include new and/or remove and replace to City standards, the following:

The proposed driveway(s) and sidewalk shall meet Title 24 California Code of Regulations (CCR) to comply with the American’s Disability Act. The proposed driveway is not independent of the adjacent existing driveway. This project will need to modify or replace adjacent existing driveway to the satisfaction of the Public Works Department. The driveway is also not independent of an existing nonstandard storm drain pipe and outlet.

The property owner shall complete a Minor Encroachment Permit (MEP) with the City of Santa Barbara for the maintenance of the storm drain facility. This shall include the existing nonstandard storm drain junction structure at the adjacent property frontage to the outlet structure at the property frontage and include the structures. The structures and storm drain pipe may need to be redesigned to meet current City standards or designed to the satisfaction of the City Engineer.

Frontage improvements shall include relocation of the existing sign and painting of red curb.

- d. **Construction-Related Truck Trips.** Construction-related truck trips for trucks with a gross vehicle weight rating of three tons or more shall not be scheduled during peak hours (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.) in order to help reduce truck traffic on adjacent streets and roadways.
- e. **Agreement to Construct and Install Improvements.** The Owner shall submit an executed *Agreement to Construct and Install Improvements*, prepared by the Engineering Division, an Engineer’s Estimate, signed and

stamped by a registered civil engineer, and securities for construction of improvements prior to execution of the Agreement.

2. **Community Development Department.**

- a. **Recordation of Agreements.** The Owner shall provide evidence of recordation of the written instrument that includes all of the Recorded Conditions identified in condition B "Recorded Conditions Agreement" to the Community Development Department prior to issuance of any building permits.
- b. **Drainage and Water Quality.** The project is required to comply with Tier 3 of the Storm Water BMP Guidance Manual, pursuant to Santa Barbara Municipal Code Chapter 22.87 (treatment, rate and volume). The Owner shall submit a hydrology report prepared by a registered civil engineer or licensed architect demonstrating that the new development will comply with the City's Storm Water BMP Guidance Manual. Project plans for grading, drainage, stormwater facilities and treatment methods, and project development, shall be subject to review and approval by the City Building Division and Public Works Department. Sufficient engineered design and adequate measures shall be employed to ensure that no unpermitted construction-related or long-term effects from increased runoff, erosion and sedimentation, urban water pollutants (including, but not limited to trash, hydrocarbons, fertilizers, bacteria, etc.), or groundwater pollutants would result from the project.
- c. **Design Review Requirements.** Plans shall show all design, landscape and tree protection elements, as approved by the appropriate design review board and as outlined in Section C "Design Review," and all elements/specifications shall be implemented on-site.
- d. **Conditions on Plans/Signatures.** The final Resolution shall be provided on a full size drawing sheet as part of the drawing sets. Each condition shall have a sheet and/or note reference to verify condition compliance. If the condition relates to a document submittal, indicate the status of the submittal (e.g., Final Map submitted to Public Works Department for review). A statement shall also be placed on the sheet as follows: The undersigned have read and understand the required conditions, and agree to abide by any and all conditions which are their usual and customary responsibility to perform, and which are within their authority to perform.

Signed:

Property Owner	Date	
Contractor	Date	License No.
Architect	Date	License No.
Engineer	Date	License No.

- E. **Construction Implementation Requirements.** All of these construction requirements shall be carried out in the field by the Owner and/or Contractor for the duration of the project construction, including demolition and grading.
1. **Construction Contact Sign.** Immediately after Building permit issuance, signage shall be posted at the points of entry to the site that list the contractor(s) name, contractor(s) telephone number(s), construction work hours, site rules, and construction-related conditions, to assist Building Inspectors and Police Officers in the enforcement of the conditions of approval. The font size shall be a minimum of 0.5 inches in height. Said sign shall not exceed six feet in height from the ground if it is free-standing or placed on a fence. The sign size shall not exceed 24 square feet.
 2. **Construction Storage/Staging.** Construction vehicle/ equipment/ materials storage and staging shall be done on-site. No parking or storage shall be permitted within the public right-of-way, unless specifically permitted by the Public Works Director with a Public Works permit.
 3. **Unanticipated Archaeological Resources Contractor Notification.** Standard discovery measures shall be implemented per the City master Environmental Assessment throughout grading and construction: Prior to the start of any vegetation or paving removal, demolition, trenching or grading, contractors and construction personnel shall be alerted to the possibility of uncovering unanticipated subsurface archaeological features or artifacts. If such archaeological resources are encountered or suspected, work shall be halted immediately, the City Environmental Analyst shall be notified and the Owner shall retain an archaeologist from the most current City Qualified Archaeologists List. The latter shall be employed to assess the nature, extent and significance of any discoveries and to develop appropriate management recommendations for archaeological resource treatment, which may include, but are not limited to, redirection of grading and/or excavation activities, consultation and/or monitoring with a Barbareño Chumash representative from the most current City qualified Barbareño Chumash Site Monitors List, etc.

If the discovery consists of possible human remains, the Santa Barbara County Coroner shall be contacted immediately. If the Coroner determines that the remains are Native American, the Coroner shall contact the California Native American Heritage Commission. A Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List shall be retained to monitor all further subsurface disturbance in the area of the find. Work in the area may only proceed after the Environmental Analyst grants authorization.

If the discovery consists of possible prehistoric or Native American artifacts or materials, a Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List shall be retained to monitor all further subsurface disturbance in the area of the find. Work in the area may only proceed after the Environmental Analyst grants authorization.

A final report on the results of the archaeological monitoring shall be submitted by the City-approved archaeologist to the Environmental Analyst within 180 days of completion of the monitoring and prior to any certificate of occupancy for the project.

F. **Prior to Certificate of Occupancy.** Prior to issuance of the Certificate of Occupancy, the Owner of the Real Property shall complete the following:

1. **Repair Damaged Public Improvements.** Repair any public improvements (curbs, gutters, sidewalks, roadways, etc.) or property damaged by construction subject to the review and approval of the Public Works Department per SBMC §22.60. Where tree roots are the cause of the damage, the roots shall be pruned under the direction of a qualified arborist.
2. **Complete Public Improvements.** Public improvements, as shown in the public improvement plans or building plans, shall be completed.

G. **General Conditions.**

1. **Compliance with Requirements.** All requirements of the city of Santa Barbara and any other applicable requirements of any law or agency of the State and/or any government entity or District shall be met. This includes, but is not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.), the 1979 Air Quality Attainment Plan, and the California Code of Regulations.
2. **Approval Limitations.**
 - a. The conditions of this approval supersede all conflicting notations, specifications, dimensions, and the like which may be shown on submitted plans.
 - b. All buildings, roadways, parking areas and other features shall be located substantially as shown on the plans approved by the Staff Hearing Officer.
 - c. Any deviations from the project description, approved plans or conditions must be reviewed and approved by the City, in accordance with the

Planning Commission Guidelines. Deviations may require changes to the permit and/or further environmental review. Deviations without the above-described approval will constitute a violation of permit approval.

3. **Litigation Indemnification Agreement.** In the event the Planning Commission approval of the Project is appealed to the City Council, Applicant/Owner hereby agrees to defend the City, its officers, employees, agents, consultants and independent contractors ("City's Agents") from any third party legal challenge to the City Council's denial of the appeal and approval of the Project, including, but not limited to, challenges filed pursuant to the California Environmental Quality Act (collectively "Claims"). Applicant/Owner further agrees to indemnify and hold harmless the City and the City's Agents from any award of attorney fees or court costs made in connection with any Claim.


Applicant/Owner shall execute a written agreement, in a form approved by the City Attorney, evidencing the foregoing commitments of defense and indemnification within thirty (30) days of being notified of a lawsuit regarding the Project. These commitments of defense and indemnification are material conditions of the approval of the Project. If Applicant/Owner fails to execute the required defense and indemnification agreement within the time allotted, the Project approval shall become null and void absent subsequent acceptance of the agreement by the City, which acceptance shall be within the City's sole and absolute discretion. Nothing contained in this condition shall prevent the City or the City's Agents from independently defending any Claim. If the City or the City's Agents decide to independently defend a Claim, the City and the City's Agents shall bear their own attorney fees, expenses, and costs of that independent defense.

This motion was passed and adopted on the 9th day of November 2016 by the Staff Hearing Officer of the City of Santa Barbara.

I hereby certify that this Resolution correctly reflects the action taken by the city of Santa Barbara Staff Hearing Officer at its meeting of the above date.



Krystal Vaughn, Commission Secretary



Date

PLEASE BE ADVISED:

1. This action of the Staff Hearing Officer can be appealed to the Planning Commission within ten (10) days after the date the action was taken by the Staff Hearing Officer.
2. If the scope of work exceeds the extent described in the Modification request or that which was represented to the Staff Hearing Officer at the public hearing, it may render the Staff Hearing Officer approval null and void.
3. If you have any existing zoning violations on the property, other than those included in the conditions above, they must be corrected within thirty (30) days of this action.
4. Subsequent to the outcome of any appeal action your next administrative step should be to apply for **Single Family Design Board (SFDB)** approval and then a building permit.
5. **PLEASE NOTE: A copy of this resolution shall be reproduced on the first sheet of the drawings submitted with the application for a building permit.** The location, size and design of the construction proposed in the application for the building permit shall not deviate from the location, size and design of construction approved in this modification.
6. **NOTICE OF MODIFICATION APPROVAL TIME LIMITS:**
The Staff Hearing Officer action approving the Modification shall terminate two (2) years from the date of the approval, per Santa Barbara Municipal Code §28.87.360, unless:
 1. An extension is granted by the Community Development Director prior to the expiration of the approval; or
 2. A Building permit for the use authorized by the approval is issued and the construction authorized by the permit is being diligently pursued to completion and issuance of a Certificate of Occupancy.
7. **NOTICE OF COASTAL DEVELOPMENT PERMIT TIME LIMITS:**
The Staff Hearing Officer action approving the Coastal Development Permit shall expire two (2) years from the date of final action upon the application, per Santa Barbara Municipal Code §28.44.230, unless:
 1. Otherwise explicitly modified by conditions of approval for the coastal development permit.

2. A Building permit for the work authorized by the coastal development permit is issued prior to the expiration date of the approval.
3. The Community Development Director grants an extension of the coastal development permit approval. The Community Development Director may grant up to three (3) one-year extensions of the coastal development permit approval. Each extension may be granted upon the Director finding that: (i) the development continues to conform to the Local Coastal Program, (ii) the applicant has demonstrated due diligence in completing the development, and (iii) there are no changed circumstances that affect the consistency of the development with the General Plan or any other applicable ordinances, resolutions, or other laws.

8. NOTICE OF TIME LIMITS FOR PROJECTS WITH MULTIPLE APPROVALS (SBMC § 28.87.370):

If multiple discretionary applications are approved for the same project, the expiration date of all discretionary approvals shall correspond with the longest expiration date specified by any of the land use discretionary applications, unless such extension would conflict with state or federal law. The expiration date of all approvals shall be measured from date of the final action of the City on the longest discretionary land use approval related to the application, unless otherwise specified by state or federal law.

